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No. 71-832

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

RAYMOND MARQUEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner and co-defendants Angelet and Rivera were convicted on two counts of having caused interstate and foreign travel to commit extortion and distribute gambling proceeds, and on one count of conspiracy to commit those

offenses, in violation of 18 U.S.C. 1952 and 371.[1] Petitioner was sentenced to concurrent three-year prison terms. The court of appeals affirmed (Pet. App. A).

Petitioner contends that, since the person he caused to travel in interstate and foreign commerce was the victim of the extortion scheme, the travel did not come within the terms of Section 1952 under the rationale of this Court's decision in *Rewis* v. *United States*, 401 U.S. 808.[2] As the court below held (Pet. App. A 6), *Rewis* is inapplicable both because the person whose travel was caused was an employee of petitioner's in unlawful gambling operations (see 401 U.S. at 813) and because he was the victim of a specific extortionate threat by petitioner intended to cause him to travel interstate. See *United States* v. *DeCavalcante*, 440 F. 2d 1264, 1268 (C.A. 3). Here petitioner, after threats of violence, ordered the victim Nieves (an employee whom he had accused of having cheated in the illegal numbers operation carried on by himself and Rivera) to go to Puerto Rico and obtain money to pay to the conspirators. Nieves was petitioner's agent to obtain the funds; he was not, as in *Rewis*, a mere bettor or patron of the illegal gambling operation.

Petitioner also contends that the money which Nieves obtained in Puerto Rico was not the "proceeds" of the unlawful gambling activity within the meaning of Section 1952(a)(1). This contention is answered by the

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[1] Rivera has filed a separate petition for a writ of certiorari (No. 71-668) to which we have filed a response.

[2] The same claim is raised by Rivera and answered on pages 2-4 of our Memorandum in Opposition in that case.

opinion below (Pet. App. A 5), which points out that the money was from the illegal operation run by petitioner and his co-conspirators.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1972.

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